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DEPARTMENT OF STATE

Washington, D.C. 20520

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MEMORANDUM FOR RICHARD V. ALLEN
THE WHITE HOUSE

POL 27

Subject: Letter from Arthur Goldberg to the President on the Legality of the Israeli Raid on the Osirak Reactor

B-5

L. Paul Bremer, III
Executive Secretary

Attachments:

1. Suggested Reply from President
2. Suggested State Department Reply
3. Incoming Letter from Arthur Goldberg

81 NOV 26 P4:50

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Clearances:
NEA - Mr. Cluverius
S/P - Mr. Ross
P - Mr. Baker
} by phone

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ARTHUR J. GOLDBERG

June 17, 1981

The President
The White House
Washington, D. C.

029099

Dear Mr. President:

In view of the allegation that Israel violated international law in bombing Iraq's nuclear installation, I am impelled to state my own view as to the legality of Israel's action.

Iraq has consistently proclaimed that it is in a state of war with Israel. Further, Iraq, contrary to relevant resolutions of the United Nations, has refused to renounce belligerency against Israel and to conclude a peace treaty.

Iraq has also refused to accept Resolutions 242 and 338 unanimously adopted by the United Nations Security Council.

In light of the fact that by its own decision Iraq deems itself to be at war with Israel, the State of Israel, under established rules of international law, has the right to take military action, including bombing, against installations in Iraq which potentially may assist Iraq in its proclaimed war-like designs. It is not necessary, in my understanding of applicable rules of international law, for Israel to prove that the nuclear installation in question is producing nuclear bombs. It is sufficient that this nuclear installation potentially may be of assistance to Iraq in its announced program designed to undermine the security of the State of Israel.

By way of illustration, international law permits the bombing of a non-nuclear electric generating plant of a hostile and belligerent power inasmuch as such a plant may be helpful in the waging of war.

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Thus, since Iraq is in a state of war with Israel, military action by Israel against Iraqi installations helpful to its war-like designs, would be regarded in international law as justified acts of self defense by Israel. The Allied Powers, during World War II, bombed, as acts of self defense, installations by Germany, such as oil refineries, steel mills, public utilities, ball bearing plants and other such installations which might contribute to Germany's war efforts against the Allied Powers.

It is my conviction, therefore, that the criticism of Israel for the bombing of the Iraqi nuclear installation has overlooked the basic fact that Iraq, by its own choice, is in a state of war with Israel and that Israel, therefore, had the legal right to seek to destroy such an installation. It is relevant, in this context, that Israel, contrary to Iraq, has expressed its willingness to make peace with Iraq, in accordance with Resolution 242, 338 and other relevant resolutions of the United Nations Security Council.

There are, in addition to the nuclear installation, other evidences of Iraq's hostile intent, namely, the involvement of Iraqi forces in recent wars against Israel by the front line Arab States and its frequent statements since that its armed forces are available for future deployment and for the same purpose.

I am at a loss, therefore, to understand the criticism of the Israeli bombing of the Iraqi nuclear installation as contrary to accepted norms of international law and without justification as an act of self defense.

Since I have no independent knowledge about the reason for timing of the bombing attack, I express no opinion on this aspect of the matter. And since I also possess no independent information, other than public and conflicting statements on the advisability of resorting to military force rather than diplomatic measures, I likewise regard it to be inappropriate to comment on the military necessity or political wisdom of the attack. I have no doubt, however,

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about Israel's legal right to bomb Iraq's nuclear installations, in light of the given circumstances, under traditional principles of international law and generally accepted concepts of what actions constitute self defense between belligerents.

Respectfully submitted,

Arthur J. Goldberg

Former Associate Justice of the Supreme Court of the United States

Former Permanent Representative of the United States to the United Nations

Former U.S. Ambassador-at-Large

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